

**UNITED STATE OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN**

WESTERN MICHIGAN AREA LOCAL 281,
AMERICAN POSTAL WORKERS UNION, AFL-
CIO (APWU) (UNITED STATES POSTAL SERVICE)

Respondent,

and

Case 07-CB-134861

SAMUEL J. NAVES, an Individual

Charging Party

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to 29 CFR 101.24 and Fed.R.Civ.P 56, Respondent hereby moves for summary judgment in its favor as the charge underlying the complaint is untimely under 29 U.S.C. §160(b) as it was brought more than six months after the basis of the complaint arose.

I. Background Facts

The Charging Party ("Naves") was a non-career PSE Clerk who worked at the U.S. Postal Service's East Paris Post Office when Naves was removed on January 23, 2013 for Failure to Follow Instructions: Scheme Failure. *Exhibit 1 – Notice of Removal*. Respondent grieved the removal. In or about the end of February 2013, Respondent obtained a favorable settlement offer, from the Postmaster to allow Naves to retrain for the scheme on the clock for 2 hours a day and retake the test again. *Exhibit 2 – Confidential Witness Affidavit of Roy Bailey, p. 1, lines 7-10*. The Charging Party wanted backpay, so the Clerk Craft Director went back to the Postmaster with the counter offer: it was rejected. *Id., p. 1, line 13-17*. The Clerk Director then

advised the Charging Party of the Postmaster's rejection of the counter and Naves rejected the settlement offer from the U.S. Postal Service. The Clerk Director advised Naves that there was no merit to move the case forward and that he was not going to move the grievance to step 3. About a week later (in or about late February 2013-early March 2013), the Charging Party called the Clerk Director and stated he wanted the grievance moved forward rather than take the settlement offer. Naves was advised by the Clerk Director that there was no merit and if rejected the offer Naves was tying the Clerk Director's hands. The Clerk Director then advised the Postmaster of the Charging Party's rejection of the settlement and that the case was not going to be moved forward. Even though the Charging Party had been told twice before that his rejection of the offer would lead to dismissal of the grievance, the Clerk Director again advised the Charging Party of the decision not to move the grievance forward. *Id. p. 2, line 1-19.*

Sixteen months later, Naves filed an unfair labor charge alleging "That the union had fraudulent cancelled its decision not to send my grievance to arbitration for my discharge appeal, This was a racially motivated and a discrimination decision." Exhibit 3 – Unfair Labor Charge dated 8/18/14. The sworn affidavit of Mr. Bailey evidences that the Charging Party was informed 3 times during the period of late-February 2013 to early March 2013 that his rejection of the settlement offer would result in the Union not moving the grievance forward. As the Charging Party persisted in his rejection of the settlement offer, the grievance was closed in accordance with the information conveyed to the Charging Party.

II. Law

Section 10(b) of the NLRA, provides in relevant part that, "[N]o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board and the service of a copy thereof upon the person against whom such

charge is made.” 29 U.S.C. § 160(b). This six-month period for filing an unfair labor practice complaint is a statute of limitations, and is procedural, not jurisdictional. *See NLRB v. St. Francis Healthcare Centre*, 212 F.3d 945, 967 (6th Cir. 2000). The six-month limitations period accrues from the date that the plaintiff discovered or reasonably should have discovered the act constituting the alleged unfair labor practice. *See, e.g., Nida v. Plant Protection Ass’n Nat.*, 7 F.3d 522, 525 (6th Cir.1993). Section 10(b) is intended to, “[b]ar litigation over past events after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused, and of course to stabilize existing bargaining relationships.” *Local Lodge No. 1424 v. NLRB*, 362 U.S. 411, 419 (1960) (internal citation and quotations omitted).

It is clear from the supporting evidence attached to this Motion that the Charging Party filed his complaint 16 months after he had been told in three separate conversations with the Clerk Director that Respondent was not going to move the grievance forward if he rejected the settlement offer and after he was advised the union closed the grievance. There is no merit to the assertion that Respondent did not keep him informed of the status of the grievance. He was told what would happen if he rejected the settlement offer: it would be closed. There is no evidence of wrong doing, fraud or discrimination by the Respondent. In fact, the union obtained a very favorable settlement that the Charging Party rejected knowing that the union would not move the grievance forward based on his rejection.

For the foregoing reasons, the untimely Charge must be dismissed.

Respectfully submitted,

WHEELER UPHAM, P.C.

Dated: November 12, 2014

By



Glenn L. Smith (P43156)
Attorneys for Respondent
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Grand Rapids, MI 49503
(616) 459-7100
smith@wuattorneys.com

CERTIFICATE OF SERVICE

The electronically filed Respondent's Motion For Summary Judgment is being served on the following individuals in accordance with the service requirements of Section 102.114(i) of the Board's Rules and Regulations by serving the party by electronic mail (email). If the other party does not have the ability to receive electronic service, the other party will be notified by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service no later than the next day, by overnight delivery service, or, with the permission of the party receiving the document, by facsimile transmission.

Samuel J. Naves
18 Charles Lane
Pontiac MI 48341
sjnaves1958@yahoo.com

Roderick D. Eves, Deputy Managing Counsel
U.S. Postal Service Law Dept – NLRB Unit
1720 Market Street, Room 2400
Saint Louis MO 63155-9948
Roderick.D.Eves@usps.gov

Dated: November 12, 2014

By



Glenn L. Smith

cc: Amy Puhalski, President
Western Michigan Area Local 281
APWU, AFL-CIO
PO Box 2706
Grand Rapids MI 49501-2706



UNITED STATES
POSTAL SERVICE

DATE: January 23, 2013

SUBJECT: Notice of Removal

TO: Name: Sam Naves
Title: PSE Clerk
EIN: 0417899
Location: Eat Paris Post Office
Grand Rapids MI 49512

You are hereby notified that you will be removed from the Postal Service no later than (30) days from the date you receive this notice. The reason(s) for this notice is:

The reason for this action: **Failure to Follow Instructions: Scheme Failure**

Specifically: In your PSE Clerk position you were assigned a city/local scheme. You were provided written notification that you were assigned to cast scheme training zone 49456. The letter informed you that this scheme contained 695 items and that you are allowed is 43 hours and 28 minutes to study these items.

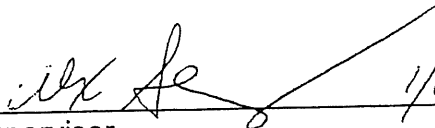
You began your training on June 18, 2012. You acknowledged understanding the written and verbal instructions regarding the training process that was provided during orientation when you initialed the orientation form. You were informed and were aware that your employment was contingent upon your completing and qualifying the scheme training

During orientation you were instructed to initial after you completed each pre-test. You took the first test on November 2, 2012 with a score of 44% and initialed as instructed. You took the second pre-test on November 28, 2012 obtaining a score of 46%. This time you refused to initial as instructed. You were instructed to report on November 29, 2012, the next day, to take your final test. You failed to follow this instruction. You did not report to take your final test until December 6, 2012.

You completed your allotted training hours from June 18, 2012 until November 28, 2012. The score of 95% is required for passing and qualification, On December you took your final test your score was 50% which is not passing.

You were interviewed on January 10, 2013, you provided no acceptable explanation.

You have the right to file a grievance under the Grievance-Arbitration procedure set forth in Article 15, Section 2 of the National Agreement within fourteen (14) days of your receipt of this notice.


Supervisor _____
Date 1/24/13


Reviewing Authority _____
Date 1/24/13

Mailed Priority Delivery Confirmation and regular mail on: _____

Delivery Confirmation # _____

cc: Postmaster
Local Services
O.P.F.

Sam Naves
04178999
DISC



County of Kent

SS

State of Michigan

CONFIDENTIAL WITNESS AFFIDAVIT

I, Roy Bailey, being first duly sworn upon my oath, hereby state as follows: I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

My address is 2511 Lawncrest Drive NE, Grand Rapids, 49505. My telephone number is 616-304-8908. I am employed by USPS, located at 1765 3 Mile, Grand Rapids, MI.

1 I have worked for the USPS for 22 years. Currently, I work as a distribution clerk.

2 From 2011 to 2013 I served as the Clerk Craft Director for the APWU, Western

3 Michigan Area Local.

4 In late 2012, I learned that Sam Naves received a 30 day notice of removal. A

5 step one grievance was filed and it then moved to the step two process.

6 In about the end of February 2013, I set up a meeting with Theresa Mullins, the

7 postmaster, and she was doing the step two meetings. I met with her on Naves'

8 grievance. We talked about the lack of training. Ultimately, the USPS would

9 offer to settle the grievance for no back pay but for 30 days of two hours on the

10 clock to learn the scheme. I had reviewed Naves' training records prior to the

11 meeting and I was concerned that Naves had not been attending the training as

12 he should.

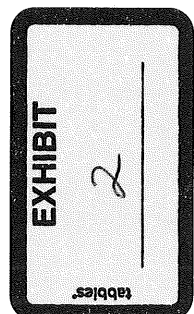
13 After this meeting, I called Sam. I told him that he was not going to get any

14 backpay. He wanted 2 hours of pay for each day that he was due from the date

15 he was let go to the date of when he returned for training.

16 I went back to the postmaster with the counter offer. She said no and stuck with

17 her proposal.



sh

1 I called Sam and told him that she would not move off it and that he should take
2 the offer of two hours a day, learn the scheme and return to work. Sam rejected
3 the offer. I said there was no merit for me to move the case and that you had
4 failed the scheme and that he had been removed for just cause. I said we didn't
5 have anything to stand on. I said that I wasn't going to move it to step three and
6 waste their time. He told me to move the grievance. I said that it was my opinion
7 as the Clerk Craft Director that I wasn't going to move the grievance. I said that
8 in my 19 years and with this being a new title (PSE) in the postal service and that
9 the removal was for just cause. I told him to give it some thought on coming
10 back for 30 days.

11 About a week later, Naves called me and said that he wanted me to move the
12 grievance forward. I said there was no merit and once you declined the 30 day
13 offer you tied my hands that I would have to say that they had made an offer.
14 Thereafter, I called Mullins to meet with her that Naves had declined the offer
15 and that the case was closed as it was not be moved forward.

16 It is my practice to inform the grievants that their grievance was being dropped.
17 We did it on the phone because Naves was living on the other side of the state at
18 the time. Sometimes I would inform grievants in person, but given the potential
19 cost in this case, I did it over the phone.

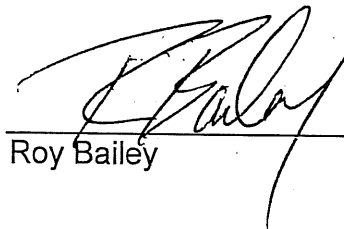
20 At the step two grievance, it is the Union's responsibility to resolve them and the
21 decision to process the grievance is ultimately made by the Clerk Craft director.

22 Of the other PSE's that had also failed to pass the scheme, none of their
23 grievances have been moved beyond the second step due to the Union's inability
24 to prevail under the contract language.



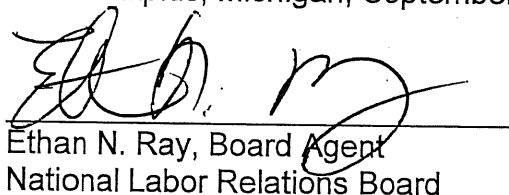
I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make any changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this statement consisting of 3 pages, including this page, I fully understand its contents, and I certify that it is true and correct to the best of my knowledge and belief.



Roy Bailey

Subscribed and Sworn To Before me at
Grand Rapids, Michigan, September 24, 2014.



Ethan N. Ray, Board Agent
National Labor Relations Board

INTERNET
FORM NLRB-508
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case	Date Filed
07-CB-134861	August 18, 2014

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT			
a. Name Amy Puhlski Western Michigan Area Local 281, APWU		b. Union Representative to contact Amy Puhlski 225 Michigan Grand Rapids MI 49503	
c. Address (Street, city, state, and ZIP code) 225 Michigan Grand Rapids MI 49503		d. Tel. No.	e. Cell No. 616-822-3678
		f. Fax No.	g. e-Mail
h. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) (1) (A) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)			
<p>On or about July 10 2014, I learned from a FOIA request from Amy Puhlski President of the Post Union (crafts and Clerks) That the union had fraudulent cancelled its decision not to send my grievance to arbitration for my discharge appeal, This was a racially motivated and a discrimination decision.</p>			
3. Name of Employer US Post Service		4a. Tel. No.	b. Cell No.
		c. Fax No.	d. e-Mail
5. Location of plant involved (street, city, state and ZIP code) 225 Michigan Grand Rapids MI 49503		6. Employer representative to contact Amy Puhlski 616-822-3678	
7. Type of establishment (factory, mine, wholesaler, etc.) Government	8. Identify principal product or service Mail	9. Number of workers employed 500 +	
10. Full name of party filing charge Samuel J Naves		11a. Tel. No.	b. Cell No. 616-308-7151
		c. Fax No.	d. e-Mail sjnaves1958@yahoo.cc
11. Address of party filing charge (street, city, state and ZIP code.) 18 Charles Lane Pontiac MI 48341			
12. DECLARATION I declare that I have read my above charge and that the statements therein are true to the best of my knowledge and belief. By <u>Samuel J Naves</u> (signature of representative or person making charge) (Print type name and title or office, if any) 18 Charles Lane Pontiac MI 48341 Address		Tel. No. Cell No. 616-308-7151 Fax No. e-Mail	

RECEIVED
NLRB
2014 AUG 18 AM 10 58
RESIDENT OFFICE
REGION 7
GRAND RAPIDS, MI

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT

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